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In The

Supreme Court of the United States

October Term, 1982

No.

LOCAL UNION NO. 680,
MILK DRIVERS AND DAIRY EMPLOYEES
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
Cross-Petitioner,

v.

LUCIA NOVEMBRE And ANNA DELUCA,
Respondents.

CROSS PETITION OF LOCAL 680, MILK DRIVERS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

(1) Whether a local union president who is in good faith mistakenly stated to its members, who were pension fund participants, that a reciprocity agreement between two pension funds existed when in fact no reciprocity agreement existed, violated his duty to fairly represent the union members-pension fund participants and thus renders the local union liable to pay from the union treasury the otherwise never existent pensions, as if a reciprocity agreement had existed in fact?

(2) Whether the duty of fair representation to a bargaining unit member continues to exist after the member withdraws from the union and the bargaining unit goes out of existence?

THE PARTIES

Local Union No. 680, Milk Drivers and Dairy Employees, (herein Local 680), is the Cross-Petitioner on a Petition filed by the Ice Cream Industry Drivers and Ice Cream Employees Union Pension Fund, (herein the Ice Cream Fund), both parties being defendants in the district court and appellants in the Court of Appeals.

Respondents are Lucia Novembre and Ann DeLuca, who were plaintiffs in the district court and appellees in the Court of Appeals.

In addition to this Cross-Petitioner and the original Petitioner, other defendants in the district court were Local 584, the Local 584 Pension Trust Fund (herein Local 584 Pension Fund), the Local 584 Welfare Trust Fund (herein the Local 584 Welfare Fund), the Ice

Cream Welfare Fund, and three individual union officers: John Kelly, Larry McGinley (sic), and Tony Iorio.

The district court found liability against Local 584, Local 680, the Local 584 Pension Fund and the Ice Cream Fund. Local 680 and the Ice Cream Fund appealed the district court judgment to the Court of Appeals.

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

ICE CREAM INDUSTRY DRIVERS AND ICE CREAM EMPLOYEES UNIONS PENSION FUND ("THE ICE CREAM FUND"),

Petitoner

v.

LUCIA NOVEMBRE and ANN DELUCA,

Respondents

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

THE OPINION BELOW

The opinions of the United States District Court for the District of New Jersey, dated February 17, 1981 and May 7, 1981, appearing in Petition as Appendix A and B respectively, are incorporated herein by reference.

The Judgment-Order of the United

States Court of Appeals for the Third Circuit, dated July 29, 1982, affirming the district court judgment, appearing in the Ice Cream Fund's Petition as Appendix C, is incorporated herein by reference. The opinions below are unreported.

JURISDICTIONAL STATEMENT

The Judgment of the United States Court of Appeals for the Third Circuit was entered on July 29, 1982. (Appendix C). The jurisdiction of this Court is involved pursuant to 28 U.S.C., Section 1254 (1).

STATUTORY PROVISIONS INVOLVED

Relevant portions of 29 U.S.C., Sections 152(5), and 159(a) are printed in Appendix D of this cross-petition.

STATEMENT OF CASE

Cross-Petitioner, Local Union No. 680, Milk Drivers and Dairy Employees affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is an unincorporated labor organization within the meaning of Section 152(5) of the Labor Management Relations Act of 1947 ("Taft-Hartley Act") 29 U.S.C. 151 et. seq. During the time of the events, an individual named McGinley held the presidency of Local 680. Additionally, McGinley also served as one of the ten trustees of the Ice Cream Fund.

Prior to 1966, Local 680 represented the drivers and clerical employees by Consumers Dairy. Pursuant to collective bargaining agreements, covering each separate unit, Consumers

made pension fund contributions on behalf of its employees to the Ice Cream Fund. (The Ice Cream Fund is a multi-employer, joint union-management pension fund established to provide pensions to covered employees.)

The two respondents, Novembre and DeLuca, were employed by Consumers in the clerical bargaining unit. In 1966, as a result of a corporate merger, the two Respondents shifted their employment from Consumers to Sealtest. The employees of Sealtest were represented by Local 607, and later, as a result of a union merger, by local 584. After Respondents' transfer of employment, they withdrew their membership from Local 680 and became members of Local 607, and then Local 584. During Respondents employ-

ment at Sealtest, they participated in the Local 584 Pension Fund. After Respondents withdrawal from Local 680 and transfer of employemnt from Consumers, Local 680 no longer had any representational rights of Respondents and no further pension fund contributions were made on Respondents behalf in to the Ice Cream Fund.

In 1975, the two Respondents each applied for pensions from the Ice Cream Fund. The Ice Cream Fund, in accordance with rules and regulations of its indenture, denied the pension applications as neither of the two Respondents had earned the minimum number of credited pension service with a contributing employer.

Respondents then brought suit in the United States District Court for the District of New Jersey.

Respondents based their claim against Local 680, and the district court so found, upon a 1966 statements made by Local 680 President McGinley to an assemblage of the Consumers drivers and clerical employees concerning the Consumer merger with Sealtest. The District Court found that McGinley stated that the employees would be able to carry over their Ice Cream Fund service credits to their new employer's pension fund. In fact, while a reciprocity agreement may have existed between the two funds as to the drivers bargaining unit, no such agreement existed for the clerical employee unit, and accordingly, Respondents DeLuca and Novembre pension rights against the Ice Cream Fund depended solely upon their extent of credited service with the Ice Cream Fund.

By its two opinions dated February 17 and May 7, 1981, the district court held Local 584 and Local 680, and the Local 584 Pension Fund and Ice Cream Pension Fund liable for the money that Respondents would have received as if there had been a reciprocal agreement between the two Funds. In reaching its judgment, the district court found that McGinley and the Local 607 union officials each misrepresented Respondents' ability to carry over their respective pension credits from the Ice Cream Pension Fund to the Local 584 Pension Fund, and that when McGinley later discovered that no such reciprocity agreement existed he failed in his duty to so inform Respondents. In this regard, but in its discussion concerning Respondents' request for

attorneys's fees, the district court specifically address the questions whether the Local 680's agent had acted in bad faith, and after analysis ruled Local 680's president, McGinley, had not acted in bad faith.

DISTRICT COURT JURISDICTION

Jurisdiction in the district court was proper under 29 U.S.C.§§185(a) and 1132(f).

REASONS FOR GRANTING THE WRIT

Throughout the nation there are tens of thousands of union agents of thousands of labor organizations, who as the statutory bargaining representatives of union members conduct the various affairs of the union. The question presented in this petition is of vital concern to all unions and their memberships as it involves a radical departure from precedent in that it establishes a new, higher standard of review upon which the

actions of the union agents are measured and consequent liability imposed against the general membership treasury. Further, it imposes upon unions a continuing duty to individuals it no longer represents and who are no longer members.

a. A Findings of Breach of the Duty of Fair Representatives has always required a finding of an element of improper union motivation such that the union action can be described as arbitrary, discriminatory or in bad faith.

The Court has consistently recognized that many competing, and sometimes conflicting, interests are involved in conducting the affairs of a union. Additionally, the Court has been cognizant of the limited resources available to unions for carrying out its functions. Accordingly, the Court has constructed criteria of review which permits the union the exercise of a wide range of reasonableness and room to commit honest mistakes.

Noting that the springhead of the duty of fair representation is the union's statutory grant of exclusive bargaining agency, see 29 U.S.C., Section 159(a), the Court has consistently interpreted the scope of the duty as being correlative to the scope of bargaining authority. Humprey v. Moore, 375 U.S. 335, 342 (1964) and Electrical Workers v. Foust, 442 U.S. 42 (1979). Because the scheme granting unions exclusive bargaining authority necessarily strips individuals of traditional forms of redress, the Court has required unions to act in good faith and with honesty of purpose. Ford Motor Co. v. Huffman, 345, U.S. 330 (1953).

It is important to understand that the duty was created to provide protections as opposed to declare new rights. In recognition of the purpose, case

rulings have defined the duty in terms of prohibitions of conduct as opposed to establishing affirmative standards of conduct. The ruling of Vaca v. Sipes, 386 U.S. 171 (1967) offers the clearest announcement of when the duty is violated:

> A breach of the statutory duty of fair representation occurs only when a unions's conduct toward a member of the bargaining unit is arbitrary, discriminatory or in bad faith... 386 U.S. at p. 190.

Subsequent cases in the Circuits have suggested more detail bounaries of the duty. Consistently noting that improper motivation is the very crux of fair representation, and an essential element in all fair representation cases, the Circuit Courts have ruled that ineptitude, carelessness, inadvertence, or negligence does not constitute arbitrary, discrimina-

atory or bad faith conduct as is required to violate the duty. Findley v. Jones Motor Freight, ect., 639 F. 2d 953, 960, (CA.3, 1981); Ruzicka v. General Motors Corp., 649 F. 2d 1207 1212 (CA. 6, 1981); Hoffman v. Lonza Inc., 658 F. 2d 519, 521, (CA. 7, 1981); Coe v. United Rubber, Cork, Linoleum & Plastic Workers of America, 571 F. 2d 1349, 1350-51, (CA. 5, 1978); Harris v. Schwerman Trucking, Co., 668 F. 2d 1204 (CA. 11, 1982). Previous to this case, the Third Circuit was firm in its adherence to requiring a showing of actual bad faith or arbitrary conduct. Riley v. Letter Carriers Local No. 380 668 F. 2d 224, (CA. 3, 1981); Findley v. Motor Freight, ect., 639 F. 2d 953, 961 (CA. 3, 1981).

The gravamen of this case centers upon a union agent's misstatement that

pension reciprocity existed when in fact it did not exist, and after later discovery of the true facts, the subsequent failure of the agent to seek out and advised the former bargaining unit members (who withdrew from the union and transferred to another local) of the error of the statement. The Third Circuit found the duty breached twice; firstly by the misstatement and secondly by the failure to advise the error. (Appendix A). Notwithstanding these conclusions the Third Circuit nevertheless specifically ruled the union did not act in bad faith. (Appendix B). In essences, the union agent made a mistake through ineptitude, negligence or carelessness. In any case, such action was not found to be within the prohibited delineations of Vaca v. Sipes, supra.

This petition warrants consideration as supervision is needed to correct the abandonment of the "bad faith" requirement mandated by Vaca v. Sipes, supra. for establishment a breach of the duty. Further, the Third Circuit decision has drastically stretched the duty beyond previous limits by imposing the existence of a continuing duty, even after the union has lost its representational and bargaining rights; that is, the source upon which the duty, springsforth. Plainly, while the Third Circuit may have ruled with a sentimental focus upon the individual plaintiffs involved, it clearly broke precident and opened broad new gateways for imposing liability upon unions and bankrupting the members general treasury.

CONCLUSION

It is respectfully requested that the certiorari should be granted to supervise the past decisions of the Court.

Respectfully Submitted,

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